

**FILE COPY****DO NOT REMOVE  
FROM FILE****IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

BB LAND, LLC, a West Virginia company,  
and JB EXPLORATION 1, LLC, a  
West Virginia company,

Plaintiffs,

v.

Civil Action No. 18-C-2

Circuit Court of Pleasants County, West Virginia

BLACKROCK ENTERPRISES, LLC,  
a West Virginia company, and  
Michael L. Benedum,

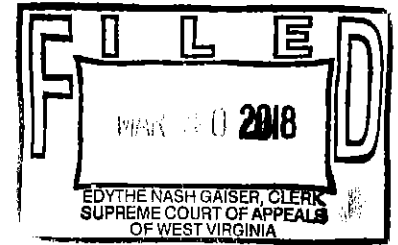
Defendant.

**To: The Honorable Chief Justice Margaret Workman**


**Plaintiffs' Motion to Refer to the Business Court Division**

Pursuant to Rule 29.06 of the West Virginia Trial Court Rules, Plaintiffs BB Land, LLC ("BB Land") and JB Exploration 1, LLC ("JB Exploration"), collectively referred to herein as Plaintiffs, by counsel, hereby move this Court to refer this civil action to the Business Court Division ("*Motion to Refer*"). As set forth more fully in the Memorandum of Law in Support of Plaintiffs' *Motion to Refer*, this civil action involves at least two (2) interrelated and significant business transactions, as well as the underlying course of dealing between the parties related to each business transaction.

More importantly, this civil action requires specialized, industry-specific knowledge as Plaintiffs' claims primarily depend on understanding a contractual agreement for the acquisition and exchange of lease agreements in preparation for the exploration for and development of oil and gas. Finally, Plaintiffs have satisfied the criteria under the Trial Court Rules to refer this civil action to the Business Court Division. Consequently, this Court should grant Plaintiffs' *Motion to Refer*.



**BB LAND, LLC and  
JB EXPLORATION 1, LLC  
By Counsel**



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Civil Action No. 18-C-2  
Circuit Court of Pleasants County, West Virginia

BLACKROCK ENTERPRISES, LLC,  
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Michael L. Benedum,

Defendants.

**Memorandum of Law in Support of Plaintiffs’  
Motion to Refer to the Business Court Division**

Plaintiffs BB Land, LLC (“BB Land”) and JB Exploration 1, LLC (“JB Exploration”), collectively referred to herein as Plaintiffs, by counsel, respectfully submit this Memorandum of Law in Support of their *Motion to Refer to the Business Court Division* (“*Motion to Refer*”). As outlined more fully below, the Complaint and underlying facts satisfy the referral criteria set forth in the West Virginia Trial Court Rules. For this reason, this Court should grant Plaintiffs’ *Motion to Refer* and refer this litigation to the Business Court Division.

**Statement of Alleged Facts**

This matter involves complicated, interrelated disputes involving a Lease Acquisition Agreement (“LEA”) between the Plaintiffs and Defendant Blackrock Enterprises, LLC (“Blackrock”) and Defendant Michael L. Benedum (“Benedum”). Additional commercial documents were also negotiated by BB Land and Blackrock in furtherance of the LEA and are involved in the present matter.

First, on May 18, 2013, BB Land and Blackrock entered into the LEA, which set forth the terms and conditions by which each party would acquire oil and gas lease agreements for

the exploration, development, and production of oil and gas in Pleasants County, West Virginia within an area of mutual interest (“AMI”). *See Exhibit A*. The LEA defines the method, procedure, and amount of interest the parties could have in each lease agreement acquired. *Ex. A* at ¶¶ 10-12. The LEA, however, is only part of the agreement.

Additionally, the parties modified the LEA by the course of their performance over a period of approximately four to five years. As Plaintiffs assert in their Complaint, the LEA was not drafted by an attorney, contradicts itself on its face, is ambiguous, and was ultimately terminated. The circuit court in this matter will be tasked with determining the validity and application of the LEA and modifications of the same.

Second, the parties engaged in negotiations and agreed to an oil and gas lease form to use in negotiations with landowners for the acquisition of oil and gas interests. To clarify the rights of the parties in each oil and gas lease acquired, BB Land and Blackrock agreed to an oil and gas lease assignment form for the assignment of shares of the working interest<sup>1</sup> between the parties in oil and gas leases acquired. *See Exhibit B*.

A third agreement, or lack of an agreement, at issue in this matter involves the parties’ negotiation of a Joint Operating Agreement and its underlying terms. The ultimate goal of the parties was to drill wells to extract oil and/or gas from the leased property. To that end, the LEA states that the parties will “execute any and all other documents necessary or that may be required at a later date.” *See Ex. A*.

On or about March 17, 2017, BB Land provided Blackrock with a Model Form Operating Agreement (the “JOA”) and requested payment of \$3,143,476.60 for Blackrock’s participation in certain wells it planned to drill based on Blackrock’s Earned Interest in the

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<sup>1</sup> In the oil and gas industry, the working interest is defined as the operating interest under an oil and gas lease. *See Langekamp, R.D., HANDBOOK OF OIL INDUSTRY TERMS & PHRASES*, 506 (5th Ed. 2006).

underlying leases. The JOA provided by BB Land is a standard form used in the oil and gas industry. Yet, Blackrock objected to the JOA and failed to submit the required payment for participation in the wells. Nevertheless, Blackrock claims entitlement to a share of the drilling proceeds.

BB Land instituted the present action on January 11, 2018. In its Complaint, BB Land asserts five counts seeking *inter alia*: (i) damages related to Blackrock's breach of the LEA; (ii) declaratory judgment for termination of the LEA; (iii) reformation of the LEA with respect to the rights of the parties thereunder; and (iv) damages for lost profits resulting from Blackrock's tortious interference with contract.

Blackrock served its Answer on February 12, 2018, and the same was filed with the Circuit Court of Pleasants County on February 15, 2018. Benedum provided an answer pursuant to Rule 12 of the West Virginia Rules of Civil Procedure by the *Motion to Dismiss* filed on February 22, 2018.

Blackrock filed a sixteen-count Counterclaim against Plaintiffs contemporaneously with its Answer, and Blackrock also alleged a Third-Party Complaint against Jay-Bee Production Company, Jay-Bee Oil & Gas, Inc., Randy Broda, and Debbie V. Broda Morgan. The claims alleged by Blackrock in its Counterclaim and Third-Party Complaint also arise from the same general course of dealing between Plaintiffs and Blackrock referenced in Plaintiffs' Complaint.

### **Legal Standard**

West Virginia Code § 51-2-15 and Rule 29 of the West Virginia Trial Court Rules provide that civil actions involving commercial issues and disputes between businesses are eligible for transfer to the West Virginia Business Court Division. W. VA. § 51-2-15(a). Under Rule 29 of the West Virginia Trial Court Rules, any party or judge may seek a referral of "business

litigation” to the Business Court Division by filing a “Motion to Refer” with the Clerk of this Court after the time to answer the complaint has expired. W. VA. TR. CT. R. 29.06(a)(1).

A copy of the complaint, answer, and docket sheet, as well as any other documents that support referral under W. VA. TR. CT. R. 29.04(a), are required to be attached to the Motion to Refer. Attached hereto as *Exhibit C* is a true and accurate copy of Plaintiffs’ Complaint filed with the Circuit Court of Pleasants County, West Virginia on January 11, 2018. A true and accurate copy of the Answer provided by Defendant Blackrock and the *Motion to Dismiss* submitted by Defendant Benedum are attached as *Exhibit D*. Finally, a true and accurate copy of the docket sheet is attached hereto as *Exhibit E*.

## **Argument**

**A. The principal claims of Plaintiffs’ Complaint involve matters of significance to the business transactions between the parties.**

Rule 29.04 of the West Virginia Trial Court Rules defines “business litigation” to include matters in which “the principal claim or claims involve matters of significance to the transactions, operations, or governance between business entities.” W. VA. TR. CT. R. 29.04(a)(1). Black’s Law Dictionary defines transaction to mean “[t]he act or an instance of conducting business or other dealings; [especially] the formation, performance, or discharge of a contract. Something performed or carried out; a business agreement or exchange.” BLACK’S LAW DICTIONARY, Transaction (9th ed. 2009).

The allegations in the Complaint arise out of or relate to multiple transactions, operations, and governance between several business entities. In fact, the crux of the present matter necessarily involves the rights of the parties pursuant to the unclear and ambiguous LEA. As the present matter develops, discovery and deposition testimony will focus on the course of

dealings between Blackrock, Benedum, and Plaintiffs pursuant to the LEA and transactions related thereto and in furtherance thereof.

To illustrate, the allegations raised by Plaintiffs in the Complaint will relate to the respective interest owned by each party in each lease agreement acquired pursuant to the LEA. *See Ex. D* at ¶¶ 21-26. Resolution of this case will necessarily involve a determination of each parties' interest in each lease agreement. Further, disposition of the case will focus on the rights of the parties pursuant to the LEA, performance of the parties pursuant to the LEA, and whether the LEA was effectively terminated and when that occurred.

The parties' course of dealing and transactions pursuant to the LEA extend much further than the LEA itself, and the Court will be tasked with determining the entire scope of the parties' business relationship. As such, Plaintiffs' *Motion to Refer* should be granted because the present matter falls within the scope of business litigation contemplated by Rule 29 of the West Virginia Trial Court Rules.

**B. The dispute presents commercial and/or technology issues for which specialized treatment is likely to improve the expectation of a fair and reasonable resolution.**

The definition of "business litigation" provided by Rule 29.04 also includes "disputes [that] present[] commercial and/or technology issues in which specialized treatment is likely to improve the expectation of a fair and reasonable resolution of the controversy . . ." W. VA. TR. CT. R. 29.04(a)(2). This commercial claim requires the circuit court and a jury to delve into the rights of the parties' pursuant to oil and gas lease agreements and assignments of oil and gas lease agreements. The LEA itself utilizes commercial terminology specific to the oil and gas industry to establish the course of dealing between the parties. *See, e.g., Ex. D. at* ¶ 10 (providing that Blackrock is entitled to an earned percentage in each lease agreement acquired and has an

option to acquire a "purchased interest" in each lease agreement). Each agreement is defined by and utilizes technical terminology specific to the oil and gas industry.

Certainly, an understanding of commercial and technological terms of the oil and gas industry will assist with these issues. More importantly, the circuit court and jury will be required to apply complex commercial and technical terminology used in the oil and gas industry to evaluate the claims made by Plaintiffs in the Complaint. Consequently, this factor justifies this Court granting Plaintiffs' *Motion to Refer* and referring the present matter to the Business Court Division.

**C. The claims are not expressly excluded under the West Virginia Trial Court Rules.**

Rule 29.04 specifically excludes certain cases from the jurisdiction of the Business

Court when:

the principal claim or claims do not involve: consumer litigation, such as products liability, personal injury, wrongful death, consumer class actions, actions arising under the West Virginia Consumer Credit Act and consumer insurance coverage disputes; non-commercial insurance disputes relating to bad faith, or disputes in which an individual may be covered under a commercial policy, but is involved in the dispute in an individual capacity; employee suits; consumer environmental actions; consumer malpractice actions; consumer and residential real estate, such as landlord-tenant disputes; domestic relations; criminal cases; eminent domain or condemnation; and administrative disputes with government organizations and regulatory agencies, provided, however, that complex tax appeals are eligible to be referred to the business Court Division.

W. VA. TR. CT. R. 29.04(a)(3). As set forth in the above provision, the West Virginia Trial Court Rules do not exclude Plaintiffs' claims in this litigation nor do the claims raised by Plaintiffs relate to those matters specifically excluded from the jurisdiction of the Business Court Division.



Therefore, West Virginia Trial Court Rule 29.04(a)(3) allows this Court to refer this litigation to the Business Court Division, and this Court should grant Plaintiffs' *Motion to Refer*.

### **Conclusion**

For the reasons set forth herein, Plaintiffs respectfully request that this Court grant its Motion to Refer.

**BB LAND, LLC and  
JB EXPLORATION 1, LLC  
By Counsel**



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**Certificate of Service**

I, Evan G. Conard, counsel for Plaintiffs BB Land, LLC and JB Exploration I, Inc.,  
do hereby certify that a true and accurate copy of the foregoing *Motion to Refer to the Business Court Division* and the *Memorandum of Law in Support of Motion to Refer to the Business Court Division* were served upon the following counsel of record by United State Mail, postage prepaid on the 30th day of March 2018:

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